



## THIRD PARTY COMPLAINTS PROTOCOL FOR TRAFFIC COMMISSIONERS AND DEPUTY TRAFFIC COMMISSIONERS

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This policy has no statutory basis and is issued with and is subject to the agreement of the traffic commissioners (TCs) for Great Britain & the Secretary of State for Transport.	
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Beverley Bell  
Senior Traffic Commissioner

## 1. Introduction

- 1.1 All TCs seek to maintain the highest standards of personal and professional conduct. A complaint that a TC has in some way fallen short of these standards is taken seriously.
- 1.2 The protocol described below is designed to ensure that the complaints process is readily understood. It also indicates how everything will be done to ensure that any complaint is dealt with consistently, fairly and efficiently. The protocol is to be read in a way which is consistent with the Legal Framework. It shall not be implemented in a way which interferes with the TCs statutory protections under the Public Passenger Vehicles Act 1981 and the Health & Safety at Work etc. Act 1974 and similar provisions. This document also sets out the scope of the protocol, the principles which govern its operation and the roles and responsibilities of those involved in handling complaints.
- 1.3 This document sets out the procedures for dealing with complaints by third parties about the personal conduct of traffic commissioners and deputy traffic commissioners [hereafter referred to as TCs] in relation to their judicial and their administrative functions, subject to the qualifications set out in the protocol. Complaints to the Senior Traffic Commissioner (STC) will normally be submitted for investigation in the first place by the TC in the relevant office. The STC may vary this either where the complainant indicates he/she has failed to get a satisfactory response from a TC or where both the complainant and the STC considers it justifies immediate escalation to the STC. For the avoidance of doubt this document refers to all complaints including those where the TC has already sought to address the complaint directly or via support staff.
- 1.4 The procedures shall operate in accordance with the principles regarding complaints set out in the Judicial Conduct (Tribunals) Rules 2013.

## 2. Key features

- 2.1 The procedures exist to address complaints that arise when it might be considered that a TC's conduct might not have been in accordance with the Senior Traffic Commissioner's Guidance on Traffic Commissioner's conduct:  
<https://www.gov.uk/government/publications/administrative-policy-guidance-for-the-traffic-commissioners>.
- 2.2 The protocol recognises the judicial independence of each TC. Complaints relating to judicial decisions made by TCs or to the reasoning processes underlying a decision or the case management prior to such a decision, including the decision to call an operator or an applicant for an operator's licence to public inquiry<sup>1</sup> or similar disposal may form grounds of appeal to the Upper Tribunal Administrative Appeals Chamber, or exceptionally the Administrative Court of the High Court or Court of Session.<sup>2</sup> Vocational driving licence holders and applicants for vocational licences have a right of appeal against the decision of the TC to the magistrates' court or Sheriff court. If the matters complained of are in essence a ground of appeal, then they do not fall to be considered under this Protocol.
- 2.3 Complainants should consider in the first instance whether a complaint about a TC's judicial decision should be submitted to the appropriate appeals body. Examples could

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<sup>1</sup> See paragraph 101 of *Al-Le Logistics ad Ors v The Traffic TC for the South Eastern and Metropolitan Traffic Area 2010*] EWHC 134 (Admin) for confirmation that pre Inquiry determinations are judicial not administrative.

<sup>2</sup> See paragraph 107 of *Al-Le Logistics ad Ors v The Traffic TC for the South Eastern and Metropolitan Traffic Area 2010*] EWHC 134 (Admin).

be that a TC made the wrong decision, refused to admit evidence or said that a witness's evidence was unreliable. Persons who are dissatisfied with a TC's decision or any related procedures should take independent legal advice and may appeal to a higher court if so advised. Complaints will not be addressed under this protocol whilst the matter remains subject to decision in a higher court (see 3.7.2).

2.4 It is difficult to describe every ground which might lead a person to lodge a complaint about a TC's personal conduct. Complaints may concern personal behavior at a public inquiry or driver conduct hearing and examples of personal conduct complaints include;

- Allegations of inappropriate remarks made;
- Allegations of rude or offensive conduct;

2.5 These procedures apply to complaints about TCs either received directly by TCs or by the staff provided to support them and includes those sent to the Secretary of State and/or the Department for Transport and/or Departmental agencies, their civil servants and other staff. All such complaints shall in the first instance be brought to the attention of the STC. The overriding principle shall be that the STC will encourage the complaint to be resolved wherever appropriate by the TC at local level'.

2.6 The principles of fairness, transparency and consistency require a clear process. The process to be followed will not be materially amended save in exceptional circumstances.

### **3. Requirements for a valid complaint**

3.1 **The complaint must be made in writing, be legible and the identity of the complainant must be disclosed.**

It must contain full details and dates of the allegation of misconduct (see 3.2 below). If the complaint is made orally, the complainant will be told that the complaint can only be investigated if it is put in writing. Complaints may be sent by post, fax or email and they must specify both the full name of the complainant and their postal address.

3.2 **Complaints must contain an allegation of misconduct on the part of a TC and provide as much detail as is possible about the allegation.**

The complaint must state the date, or dates the alleged misconduct took place. A complaint is to be accompanied by the documents to which the complainant intends to refer. General complaints will not be investigated. An example of a general complaint might be a statement that all TCs are not impartial.

3.3 **The complainant must consent for the complaint and accompanying documents be disclosed to the TC.**

The STC must not accept a complaint as valid if the complainant does not consent to full disclosure to the TC. When a complainant states that the subject matter is confidential the initial response will explain that the complaint can only be taken forward if it is disclosed to the person who is the subject of the complaint. If the complainant does not reply within 28 days, then the complaint will be treated as withdrawn.

3.4 **Complaints must be lodged as soon as possible.**

The starting point is that a complaint must be made within 3 months of the latest event or the matter complained of. A complaint relating to a continuing state of affairs may be made at any time until three months from when it ends. It becomes more difficult to investigate a complaint after a long passage of time and the STC has an absolute discretion to reject any complaint which is, in his or her opinion, so out of time as to prevent an effective investigation. It is unreasonable to expect a TC to recall events after a long passage of time, particularly where a transcript of a hearing or paper or electronic file may no longer be available. All complaints will be acknowledged within 14 days of

receipt and once the process is complete the complainant will be notified of the decision within 14 days thereof.

- 3.5 If a complaint has not been accepted because it is out of time the complainant must be notified accordingly and they may make representations within 10 working days of receipt of that notification if they wish to set out reasons why the complaint should be dealt with out of time.
- 3.6 The STC may extend the time limit for making a complaint in exceptional circumstances. Where the STC extends the relevant time limit they must notify both the complainant and the TC who is the subject of the complaint of the reason for the extension.
- 3.7 **The STC must dismiss the complaint, or part of the complaint, if it falls into any of the following categories:**
- 3.7.1 It does not set out sufficient detail of the allegation (please see paragraph 3.1 and 3.2 above).
- 3.7.2 It is about a judicial decision or judicial case management, and raises no question of personal misconduct. Some complaints, concerning personal conduct, may give rise to possible grounds of appeal to a higher court. Others are made while a case is continuing. In light of the overriding principle of fairness referred to above and the importance of the STC not being perceived as interfering in independent judicial decision making, it may not be appropriate to intervene. The STC wishes to discourage what might be seen as 'tactical' complaints which might undermine the overriding principles. Accordingly, this type of complaint will not normally be considered during the course of proceedings and the complainant will be asked to contact the STC once the case has been concluded. Even then if the matter complained of could have been made as part of an appeal to the Upper Tribunal then the STC is likely to decline to intervene.
- 3.7.3 The action complained of was not done or caused to be done by a TC;
- 3.7.4 It is frivolous or vexatious. A frivolous or vexatious complaint is one which has been made habitually and persistently and without any reasonable ground<sup>3</sup>.
- 3.7.5 It is without substance;
- 3.7.6 Even if true, it would not require any action to be taken;
- 3.7.7 It is untrue, mistaken or misconceived;
- 3.7.8 It raises a matter which has already been dealt with, whether under this Protocol or elsewhere, and does not present any material new evidence;
- 3.7.9 It is about the private life of a TC and could not reasonably be considered to affect their suitability to hold judicial office;
- 3.7.10 For any other reason it does not relate to misconduct by a TC.
- 3.7.11 The time limits set out in 3.4 above are not met (save for the provisions of 3.6 above).

### 3.8 **Withdrawal of a complaint**

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<sup>3</sup> The principle of refusing unreasonable or vexatious applications is recognised under the PPVA 1981.

A complaint may be withdrawn at any time. The complaint will be treated as withdrawn if STC correspondence is not responded to by a complainant within 21 days of receipt. Where a complaint is withdrawn the TC who is the subject of the complaint shall be notified in writing within 5 working days of the withdrawal.

3.9 **Special circumstances** may apply where the complaint raises serious concerns about a TC's conduct, but a complainant does not respond to correspondence within 21 days, as it may be contrary to the public interest to ignore any serious cause for concern. An investigation may be carried out on the basis of any other available information, even if the complaint has been withdrawn, subject to the requirements of natural justice.

#### **4. Role and responsibilities of the Senior Traffic Commissioner**

4.1 The STC has the overall responsibility, subject to 4.3 below, for the investigation and adjudication of complaints concerning other TCs.

4.2 Upon receipt of a complaint, the STC will decide whether the complaint should be referred to the Secretary of State for Transport having regard to the seriousness and nature of the complaint.

4.3 The STC must, within 14 days of receipt of the complaint, invite the Secretary of State to refer to a current or retired judicial office holder the following complaints: -

- Serious allegations of non-compliance with the Equality Act;
- Where there is a history of similar or related complaints;
- Any other significant complaint for example allegations of fraud, misfeasance in public office or other criminal offences;
- Complaints about the STC whilst fulfilling his or her TC role (see paragraph 5 below).

4.4 The STC shall make such arrangements as are necessary to ensure that complaints can be dealt with in the absence of the STC including the appointment of another TC to act on behalf of the STC in this regard. A TC who is the subject of a complaint clearly cannot deputise for the STC in that respect.

#### **5. Complaints about the Senior Traffic Commissioner**

5.1 Complaints received about the STC acting in his or her role as a TC, or as STC on non statutory matters as agreed by all TCs or in accordance with their statutory powers, shall be sent to the Department for Transport who will appoint another full time TC currently in post to investigate and record such complaints in accordance with these procedures.

5.2 Complaints received by the STC about the STC in that function shall be referred by the STC to the Department for Transport who shall nominate an appropriate<sup>4</sup> person to investigate and record such complaints in accordance with these procedures.

5.3 Where the Department for Transport (on behalf of the Secretary of State for Transport) receives a complaint about the STC acting either in his or her role as a TC or in respect

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<sup>4</sup> In determining if a person is 'appropriate' the Department shall have regard to the Legal Framework.

of his or her role as STC, the STC shall be notified within 14 days of receipt and details of the complaint.

## **6. Making a complaint**

- 6.1 All complaints arising in England, Wales and Scotland being sent to the STC should be marked 'Confidential' and addressed to the Senior Traffic Commissioner at the Office of the Senior Traffic Commissioner, Suite 6, Stonecross Place, Stonecross Lane North, Golborne, Warrington, WA3 2SH. The email address to which complaints should be sent is [sstc@otc.gsi.gov.uk](mailto:sstc@otc.gsi.gov.uk).

## **7. Procedure following receipt of the complaint**

### **7.1 Receipt of the complaint by the TC**

- 7.1.1 Where the TC receives the complaint themselves they must consider whether they can deal with the matter or whether it should be referred to the STC. Examples of where the TC can deal with the matter themselves are where it has taken longer than anticipated to issue a decision or deal with correspondence or MP's correspondence on local matters.
- 7.1.2 Where the TC can and does deal with the matter it is anticipated that it may be resolved by the issue of a letter of explanation and an apology where necessary. In such circumstances the matter will then be closed.
- 7.1.3 Where the TC determines that they cannot and should not deal with the matter in circumstances as above the TC must refer the complaint to the STC within 14 days thereafter and should send a copy of the complaint and all relevant papers to the Office of the Senior Traffic Commissioner marked "Strictly Private and Confidential".
- 7.1.4 The STC will then acknowledge receipt within 7 days and will also notify the complainant within 7 days that the matter has been self referred to the STC enclosing a copy of the Complaints Protocol and ask if they wish to pursue the matter as a formal complaint and requesting that they provide specific details of the complaint in accordance with paragraph 3.1 to 3.4 of the Protocol.
- 7.1.5 In the event that a formal complaint is made the STC will request receipt of all relevant papers from the TC and will also obtain either a written transcript of any relevant public inquiry or a copy of the digital recording. These are to be sent to the STC by the TC or their staff within 14 days of the request or receipt of the transcript from the transcribers.
- 7.1.6 Upon receipt the STC will then within 28 days read all relevant papers and if necessary listen to the digital recording.
- 7.1.7 Thereafter the STC will determine whether it is appropriate to invoke either the informal resolution process or a full investigation. The complainant and the TC will both be notified 7 days thereafter which process is to be followed. See Section 8 below.

### **7.2 Receipt of the complaint by the Senior Traffic Commissioner**

- 7.2.1 Where the STC receives a valid complaint about a TC the STC must consider whether the TC can and should deal with the matter themselves. Examples and the process are set out at Section 7.1 above.
- 7.2.2 Where the STC determines that the STC should deal with the matter the STC will within 14 days send a copy of the complaint and any supporting documents to the TC together with a request that all relevant papers from the OTC be sent to the Office of the Senior Traffic Commissioner marked "Strictly Private and Confidential".

- 7.2.3 The STC will then acknowledge receipt within 7 days and will also send to the complainant within 7 days of receipt of the complaint a copy of the Complaints Protocol asking if they wish to pursue the matter as a formal complaint and requesting that they provide specific details.
- 7.2.4 In the event that a formal complaint is made the STC will send a copy of all the complaint documentation to the TC who will ensure receipt of all relevant papers from the TC and will also obtain either a written transcript of any relevant public inquiry or a copy of the digital recording. These are to be sent to the STC by the TC or their staff within 14 days of the request or receipt of the transcript from the transcribers. The TC may send a written response to the complaint within 21 days.
- 7.2.5 Upon receipt the STC will then within a period of 28 days read all relevant papers and where appropriate listen to the digital recording.
- 7.2.6 Thereafter the STC will determine whether it is appropriate to invoke either the informal resolution process or a full investigation. The complainant and the TC will both be notified 7 days thereafter which process is to be followed.

## **8. Informal resolution process**

- 8.1 This process may be invoked where an assessment of the complaint indicates on the face of the papers that whilst the TC may not have acted to the highest standard, it does not amount to misconduct. In such cases the STC may deal with the matter informally and may give informal advice and guidance to the TC as he or she considers appropriate. The following paragraphs should be read with that in mind.
- 8.2 Where the STC follows the informal resolution process he or she will then decide how best to proceed. It is anticipated that the STC might speak with the complainant to obtain further details and to discover what redress the complainant is seeking. It will also give the STC an opportunity to explain matters in more detail to the complainant. The STC will speak with the TC to obtain further details of their explanation and their response to the complaint. The STC will keep a contemporaneous summary of the phone calls.
- 8.3 In the event that it is not possible or appropriate to speak personally with either the complainant and/or the TC the STC will deal with the matter on the basis of all relevant papers and digital recordings in their possession.
- 8.4 The STC may dismiss the complaint or deal with it informally and direct that it may be considered as a pastoral or training matter.

## **9. Formal investigation of a complaint**

- 9.1 In the event that the STC is satisfied that the Complaint meets the requirements in Section 3 above and further determines that the informal resolution process does not apply, the STC shall invoke the formal investigation process and procedure.

### **9.2 The investigating person**

- 9.2.1 The STC will decide whether to appoint a separate investigating person or whether to conduct the investigation themselves. The investigating person, whether it is the STC, a TC, or the Department for Transport (on behalf of the Secretary of State) shall investigate and record complaints in accordance with these procedures.

### **9.3 Functions of investigating person**

- 9.3.1 The investigating person must advise the STC:
- (a) as to the facts of the complaint;
  - (b) whether the complaint is substantiated or not;
  - (c) whether the findings of the investigation are such that the Secretary of State may wish to consider disciplinary action in terms of the traffic commissioner's appointment;
  - (d) as to any other matters in the terms of reference

#### **9.4 Procedure of investigation by investigating person**

- (1) The investigating person may decide how to conduct the investigation, but must
  - (a) notify the subject of the investigation and any complainant of the proposals for the conduct of the investigation.
  - (b) invite the subject of the investigation and any complainant to make representations on the proposals; and
  - (c) record any representations on the proposals which those persons may make.
- (2) Representations must be provided to the investigating person within ten business days of the invitation under paragraph (1) (b).

#### **9.5 Evidence and representations**

- (1) The investigating person must invite the TC to give evidence and make representations about the case.
- (2) The investigating person may invite the complainant or any person whom he/she considers can assist the investigation to give evidence about the complaint.
- (3) Evidence and representations must be provided to the investigating person within ten business days of the invitation under paragraphs (1) and (2).
- (4) The investigating person may take oral evidence if he/she considers it necessary to do so.
- (5) The investigating person must arrange for any evidence given orally to be recorded in a transcript or a tape recording.
- (6) The investigating person must also disclose any evidence obtained under paragraph (2) to the TC and must invite him/her to make representations on the evidence.
- (7) The TC must make any representations under paragraph (6) within ten business days of the invitation under paragraph (6).
- (8) Where the investigating person considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the TC, he/she must first invite:
  - (a) the person who provided the evidence, and
  - (b) the TC to make representations about the proposed disclosure.
- (9) The person who provided the evidence and the TC must make representations under paragraph (8) within ten business days of the invitation.

#### **9.6 The report of the investigating person**

- (1) Subject to the terms of reference, the investigating person may decide the form and content of his/her report.
- (2) The investigating person must disclose a draft of his/her report to the TC and invite him/her to make representations about it.
- (3) The investigating person must disclose a draft of his/her report to the complainant and invite him/her to make representations about it.
- (4) The investigating person may show a draft of his/her report to any other person, and invite him/her to make representations about it.

- (5) Disclosure of the draft report under paragraphs (3) or (4)
  - (a) may be of the whole or part,
  - (b) may be in the form of a summary, and
  - (c) must omit any information the disclosure of which is prohibited by any relevant legislation.
- (6) Representations must be provided to the investigating person within ten business days of disclosure of the draft report under paragraphs (3) or (4).
- (7) After considering any representations made in accordance with paragraphs (2) to (4) and (6) the investigating person must
  - (a) send a copy of the report to the TC; and
  - (b) send a copy of the report or the relevant part of the report to any other person who has been invited to make representations about the draft report, but omitting any material the disclosure of which is prohibited under relevant legislation.

#### **10. Review on behalf of the Department for Transport (Secretary of State)**

In the event that either the complainant or the TC is dissatisfied with the conclusion and recommendation of the report they may invite the Department for Transport (Secretary of State) to arrange a review conducted by a current or retired judicial office holder.

The review may cover:

- (a) any finding of fact;
- (b) any decision or recommendation as to the conduct of a TC;
- (c) any action which has been proposed or taken;
- (d) the procedures which have been used to deal with the case, but only so far as necessary to enable the review body to deal with the matters in subparagraphs (a) to (c) above.

The decision of the reviewer shall be final (subject to compliance with the requirements of the Public Passenger Vehicles Act 1981 which governs the appointment of traffic commissioners).

The provisional review decision shall be set to the TC in the first instance for comment and the final decision sent to the Secretary of State and TC as soon as practicable thereafter.